MISSOURI COURT OF APPEALS WESTERN DISTRICT

JEFFREY L. BOLDEN

APPELLANT,

v. STATE OF MISSOURI

RESPONDENT.

DOCKET NUMBER WD75563

DATE: October 22, 2013

Appeal From:

Boone County Circuit Court The Honorable Kevin M.J. Crane, Judge

Appellate Judges:

Division Four: James E. Welsh, Chief Judge, Presiding, Cynthia L. Martin, Judge and Terry Tschannen, Special Judge

Attorneys:

Gary E. Brotherton, Columbia, MO, for appellant.

Richard A. Starnes, Jefferson City, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

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APPELLANT,

v. STATE OF MISSOURI,

RESPONDENT.

No. WD75563 Boone County

Before Division Four: James E. Welsh, Chief Judge, Presiding, Cynthia L. Martin, Judge and Terry Tschannen, Special Judge

Jeffrey Bolden appeals from the motion court's judgment denying his Rule 29.15 motion for post-conviction relief after an evidentiary hearing. Bolden contends that the motion court clearly erred in denying his motion because (1) trial counsel was ineffective in failing to move to dismiss the charge of second degree assault of emergency personnel, because hospital security officer Monte Ruby was not "emergency personnel" within the meaning of section 565.082.2; and (2) appellate counsel was ineffective in failing to argue on appeal that there was insufficient evidence to support his conviction because the State failed to prove beyond a reasonable doubt that Ruby was "emergency personnel" within the meaning of section 565.082.2.

Affirmed.

Division Four holds:

"Emergency personnel" is defined by section 565.082.2 to include "emergency room personnel." The plain and ordinary meaning of "emergency room personnel" is all persons who work in a hospital room that is staffed and equipped for the reception and treatment of persons requiring immediate medical care. Ruby was a person who assisted in the reception of persons requiring immediate medical care, and in facilitating their treatment, where required because of the unruly nature of the patient, or others who might be present. Plainly, Ruby fell within the category of "emergency room personnel," and was thus "emergency personnel" for purposes of section 565.082. Neither trial counsel nor appellate counsel can be held ineffective for failing to challenge the charge of assault or the sufficiency of the evidence to support a conviction on the basis that Ruby was not "emergency personnel."

Opinion by Cynthia L. Martin, Judge

October 22, 2013

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